

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**V.**

**CITY OF AKRON, OHIO**

**and**

**THE STATE OF OHIO,**

## Defendants.

**CASE NO. 5:09-cv-00272**

**JUDGE JOHN R. ADAMS**

## STATUS REPORT

On January 28, 2021, the Court issued an Order directing the parties to file Status Reports by February 11, 2021, and every sixty days thereafter, indicating their responses to two questions, both related to the City of Akron’s (“City’s”) compliance with the Consent Decree in this matter. The Court’s questions, and the responses of the United States on behalf of the U.S. Environmental Protection Agency (“U.S. EPA”), are respectfully submitted below.

**1. The current status of the City of Akron's compliance with all dates and deadlines in the Decree.**

Since the United States filed its most recent Status Report addressing Consent Decree compliance with the Court on October 7, 2022, Dkt. No. 334, the City has not notified the United States of any additional noncompliance with the dates and deadlines in the Decree, nor has U.S.

EPA review of the semiannual reports and other information provided by the City indicated any such noncompliance.<sup>1</sup>

**2. Any correspondence exchanged related to extending, modifying, or altering any of the projects or deadlines in the Decree, regardless of whether those changes require Court approval**

Other than discussed below, the City has not made a request to modify, extend, or delay any projects or deadlines in the Consent Decree since the last Status Reports, Dkt. Nos. 332-334, were filed. Therefore, the parties have not exchanged correspondence related to requests for modification, extensions, or delays, other than discussed below.

As explained in previous Status Reports filed by the parties, *see, e.g.*, Dkt. Nos. 284-286, Dkt. Nos. 332-334, the City has expressed interest in making modifications to the two remaining projects included in the Long Term Control Plan Update (“LTCP Update”). Specifically, the City has proposed resizing the Northside Interceptor Tunnel (“NSIT”) required in Row 12 of the LTCP Update, and eliminating the Enhanced High Rate Treatment (“EHRT”) system at the Ohio Canal Interceptor Tunnel required under Row 11a of the LTCP Update. In recent months, the parties have continued technical and legal discussions about these potential modifications, and have exchanged communications related to these settlement negotiations.<sup>2</sup>

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<sup>1</sup> To assess compliance, the U.S. EPA reviews the City’s semiannual reports, which are required under Paragraphs 75 and 76 of the Consent Decree. Further, the City is required to submit a separate notice when it “violates, or has reason to believe it may violate, any deadline for any requirement” in the Consent Decree. Paragraph 83.

<sup>2</sup> Disclosure of the details of ongoing settlement discussions could negatively affect and inhibit communications between the parties. *See Goodyear Tire & Rubber Company v. Chiles Power Supply Inc.*, 332 F.3d 976, 981 (6th Cir. 2003) (recognizing a formal settlement privilege).

Northside Interceptor Project

On February 4, 2022, the United States sent a letter to the City providing its response to the City's proposal to modify the requirements for the NSIT. On February 15, 2022, the City invoked informal dispute resolution under Paragraph 71 of the Consent Decree. By agreement of the parties, the informal dispute resolution period was extended through April 15, 2022. During the informal dispute resolution period, the City revised its modification proposal regarding the NSIT, and the United States expressed tentative support for the proposal, subject to further negotiations and formal approvals by delegated decision-makers. As a result, the City did not file a formal notice of dispute under Paragraph 72 of the Consent Decree.<sup>3</sup>

When the parties finalize the NSIT modification (including approval by delegated decision-makers), we anticipate following the same process for seeking the Court's approval as we employed for the First and Second Amendments to the Consent Decree. That process includes lodging an agreed-upon Third Amendment with the Court, followed by a 30-day period for public comment. If the United States continues to support modification following the consideration of any public comments, we would then seek Court approval through a Motion to Enter.

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<sup>3</sup> As further discussed in the Status Reports filed by the Parties on July 13, 2022, Dkt. Nos. 323-325, the City and State interpret Paragraph 67 of the Consent Decree to have stayed obligations related to the Northside Interceptor for the duration of this dispute; *see* Dkt. Nos. 315, 317; the United States does not agree with this interpretation. On April 18, 2022, the City invoked dispute resolution regarding the parties' differing interpretations of Paragraph 67 of the Consent Decree.

Because the parties are now in tentative agreement regarding the City's revised NSIT proposal and because the City has represented that it remains on track to meet the existing NSIT deadlines under the Decree, the parties have agreed, pursuant to Paragraph 71 of the Consent Decree, to keep open the informal dispute resolution period regarding the dispute over the interpretation of Paragraph 67 at least through January 2023, and may further extend the period as necessary.

EHRT Proposal

On August 3, 2022, the United States sent a letter to the City providing its response, and reflecting the response of the State of Ohio to the City's proposal to modify the requirements for the EHRT. On September 13, 2022, the City submitted a Notice of Dispute in response to the August 3, 2022 letter, initiating the period of informal dispute resolution under Paragraph 71 of the Consent Decree. On November 15, 2022, the parties agreed to extend the period for informal negotiations through at least January 13, 2023.

Date: December 6, 2022

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

s/ Bonnie Cosgrove  
BONNIE COSGROVE  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
450 Golden Gate Ave, Ste. 07-6714  
San Francisco, CA 94102  
Phone: (415) 744-0130  
Fax: (415) 744-6476  
Email: bonnie.cosgrove@usdoj.gov